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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1293 84

PARADISE LAND AND LIVESTOCK COMPANY,
A CORPORATION,
Petitioner,

vs.

THE FEDERAL LAND BANK OF BERKELEY

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

J. D. SKEEN,
Counsel for Petitioner.

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A CORPORATION,
Petitioner,

vs.

THE FEDERAL LAND BANK OF BERKELEY

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

The petitioner is in bankruptcy under Section 75 (s). The Federal Lank Bank of Berkeley, a secured creditor, failed to file a claim covering its demands for attorney's fees and expenses amounting to $1726.00 and interest computed at the rate of 5½ per cent. The debtor filed a petition for an order requiring the creditor to appear and show cause why it should not file a statement of the amount it claimed to be legally due on mortgages from the debtor to it and offering, at the same time, to pay the full amount of the indebtedness in cash when fixed and determined by the court. It made a showing of its ability to make the payment.

At the hearing on the order to show cause, the debtor offered in evidence an itemized statement of the accounts

contained in a letter from the general counsel for the Land Bank to the attorney for the debtor, which the court received over the objections of the Land Bank. The statement shows the items going to make up attorney's fees and court costs and also the interest computed at 5½ per cent. There was also received in evidence a complaint for the foreclosure of mortgages with a decree of the state court in which the interest was computed at 5½ per cent. The decree was dated March 10, 1938, and was for but a part of the demands of the bank. No court had passed upon demands not included in the decree.

The district court refused to require the creditor to file its claim or to relieve the debtor of the payment of attorney's fees and expenses demanded by the creditor and in utter disregard of the Federal Farm Loan Statutes and the Bankruptcy Act, to which specific references will hereinafter be made, ordered the president of the petitioning corporation to submit to an examination and proceeded to take steps looking to the sale of the debtor's property. In these circumstances, the debtor appealed, and with approval of the court, by order made after the appeal was taken, sold part of its property, borrowed additional money and made payment of the entire demand of the bank. Upwards of $17,000.00 of the amount paid was made up of attorney's fees and excess interest which it paid under protest.

The appeal to the Circuit Court of Appeals for the Tenth Circuit was dismissed February 19, 1945. This petition is for a review of the order dismissing the appeal.

This Court has jurisdicton to issue the writ. Section 240, Judicial Code 28 U. S. C. A. 347.

The opinion of the Circuit Court of Appeals is found in 147 Federal Reporter 2nd 594.

The items going to make up $1726.00 attorney's fees and costs paid under protest are found in the record 22, 24 and 25.

The proceeding in the United States District Court for Utah is now pending and the debtor is subject to the jurisdiction of the court. The costs and expenses claimed by the creditor were incurred by the creditor during the time the proceeding has been pending in the federal court and are not taxable costs. No claim has been filed in the district court by the creditor or any attorney, and no affidavit has been made or filed as required by Section 62 (d) 11 U. S. C. A. 102 (d) of the Bankruptcy Act which reads as follows:

> "A custodian, receiver, or trustee or the attorney for any of them, or any other attorney, seeking compensation for services rendered by him in a proceeding under this Act or in connection with such proceeding, shall file with the court his petition setting forth the value and extent of the services rendered, the amount requested and what allowances, if any, have theretofore been made to him. Such petition shall be accompanied by his affidavit stating whether an agreement or understanding exists between the petitioner and any other person for a division of compensation and, if so, the nature and particulars thereof. If satisfied that the petitioner has, in any form or guise, shared or agreed to share his compensation or in the compensation of any other person contrary to the provisions of this subdivision, the court shall withhold all compensation from such petitioner."

The district court allowed no claim, but on the contrary, arbitrarily dismissed this petitioner's petition for an order requiring the creditor to file its claim and to strike improper charges. Furthermore, the court having appointed a trustee was proceeding with the sale of the debtor's property to pay the creditor's claim of an unknown amount while the debtor was seeking an opportunity to pay the legal claim in full. With the approval of the court and under pressure of an impending sale, the debtor paid the wrongful demands of the creditor under protest.

The petition in this case should be granted for the following reasons:

1. The Circuit Court of Appeals for the Tenth Circuit by the dismissal of the appeals has so construed Section 75 (b) of the Bankruptcy Act as to destroy its clear intent.

2. By dismissal of the appeal, the Circuit Court of Appeals has sanctioned the coercion of payment of attorney's fees and other costs and expenses without compliance with Section 62 (d) 11 U. S. C. A. 102 (d) of the Bankruptcy Act, and in violation of its express terms.

3. By dismissal of the appeal, the Circuit Court of Appeals has sanctioned the disregard of Section 791 (Fifth) of the Federal Farm Loan Act, Title 12 U. S. C. A. page 840 in that the Federal Land Bank was permitted to demand and receive attorney's fees, costs and expenses not authorized by law.

4. By dismissal of the appeal, the Circuit Court of Appeals has sanctioned the disregard and express violation of the provisions of Section 983 of the Federal Farm Loan Act, U. S. C. A. Title 12, page 881, in that it sustained the payment of attorney's fees, costs and expenses in violation of the terms of the said statute.

5. By the dismissal of the said appeal, the Circuit Court of Appeals sanctioned the utter disregard of Federal Farm Loan Act, Section 771 (Twelfth) 12 U. S. C. A. page 830 in that it has sanctioned the collection of interest in excess of that provided by the statute.

6. By the dismissal of the said appeal, the Circuit Court of Appeals has sanctioned the arbitrary refusal of the district court to require a creditor to file its claim and to pass upon a claim as prescribed by the Bankruptcy Act, Section 11 (2) Title 11, U. S. C. A. page 44, and to sell and dis-

pose of debtor's property for failure to pay claims not liquidated by the court having exclusive jurisdiction over the debtor and his property.

7. By dismissal of the appeal, the Circuit Court of Appeals has departed from the uniform practice in that it has required the debtor, while subject to the exclusive jurisdiction of the district court, to resort to an independent suit to recover money paid under protest pursuant to the orders of the court where there are other creditors and where such payments involved attorney's fees and costs claimed in the pending proceeding.

Wherefore, petitioner prays that a Writ of Certiorari be issued by this court directing that all proceedings in the Circuit Court of Appeals for the Tenth Circuit be certified and that the judgment of the said Circuit Court of Appeals and the judgment of the District Court of the United States for the District of Utah be reversed with directions.

J. D. Skeen,
Attorney for Petitioner.

SUPPORTING BRIEF

The demand of the creditor for attorney's fees and costs was wrongful because:

1. No claim was filed or allowed as required by Section 62 (d) 11 U. S. C. A. 102 (d) of the Bankruptcy Act, and

2. Section 75 (b) 11 U. S. C. A. Section 203 (b) provides:

> "No fees, costs or other charges shall be charged or taxed to any farmer or to his creditors by any conciliation commissioner or with respect to any proceeding under this section except as hereinbefore in this section provided."

There is no provision of the statute authorizing a creditor to charge attorney's fees against the debtor while the proceeding is pending in the federal court. Likewise, the Farm Loan Act, U. S. C. A. Title 12, Section 791, page 840 provides:

> "No federal land bank shall have power * * *
>
> Fifth. To demand or receive under any form or pretense any commission or charge not specifically authorized in this subchapter."

and Section 983, page 881 of the same act provides as follows:

> "Other than the usual salary or director's fee paid to any officer, director, or employee of a national farm loan association, a Federal land bank or a joint stock land bank, and other than a reasonable fee paid by such association or bank to any officer, director, attorney, or employee for services rendered, no officer, director, attorney, or employee of an association or bank organized under this subchapter shall be a beneficiary of or receive, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of such asso-

> ciation or bank. No land bank or national farm loan association organized under this subchapter shall charge or receive any fee, commission, bonus, gift, or other consideration not herein specifically authorized."

We do not know to whom the attorney's fees included in the claim were paid, for as above observed, no claim was filed, and there was no affidavit as required by the bankruptcy statute setting forth the names of the attorneys and otherwise complying with the statute. We assume, therefore, that the bank retained the money so paid under protest. We are not advised as to whether the bank so flagrantly disregards the statute in states other than Utah; nor should that be controlling in the consideration of this petition for if the practice is approved as it has been by the lower courts the charges no doubt will be made throughout the territory served by this particular bank at least.

Section 771, paragraph 12, of the Federal Farm Loan Act, forbids the collection of interest in excess of 3½ per cent.

During the difficult days of 1933 and 1934, when a large proportion of the farmers were in great distress, Section 771 of the Federal Farm Loan Act was amended by the addition to Section 771, paragraph No. 12, which so far as germane reads as follows:

> "* * * Notwithstanding the provisions of paragraph 'second' of this section, the rate of interest on any loans on mortgage made through national farm loan associations or through agents as provided in sections 801 to 808 of this chapter, or purchased from joint stock land banks, by any Federal land bank, outstanding on May 12, 1933, or made through national farm loan associations after such date, shall not exceed 3½ per centum per annum for all interest payable on installment dates occurring within a period of two years commencing July 1, 1935; and no payment of the principal portion of any installments of any such

loan outstanding on the dates of June 3, 1935, shall be required prior to July 11, 1938, if the borrower shall not be in default with respect to any other condition or covenant of his mortgage."

This act was re-enacted from time to time and was controlling in the computation of interest on all the Federal Land Bank mortgages to June 30, 1944. Notwithstanding the very terms of the Act, the Federal Land Bank computed the interest as against this debtor at the rate of 5½ per cent per annum. It has discriminated against a delinquent farmer, one of those for whose benefit the statute was obviously enacted. For the purpose of conforming to the federal statute, the board of directors of the Federal Land Bank on August 29, 1939, passed the following resolution:

"Consideration was given to the extension of delinquent Land Bank borrowers' accounts with reference to the Bank's present procedure of employing forbearance agreements instead of formal extensions. Under formal extensions delinquent borrowers would be entitled to the statutory interest rate on extended installment delinquencies, but considerable expense would be incurred by the Bank in setting up formal extensions on its books, due to the necessity of obtaining the formal application to be signed by all parties responsible for the loan, etc. This expense is believed to exceed the amount which the Bank might collect from the Treasury of the United States under claim for interest reduction. The Board of Directors, therefore, concluded that the Bank should continue with its present practice of carrying delinquencies under the informal forbearance agreements, but in order to give borrowers the same rate of interest that they could enjoy under formal extensions, it was decided to reduce the penalty interest rate from 6 per cent to 3½ per cent on association endorsed loans, 3¾ per cent on loans made under Section 25 (b) during the period prior to the completion of a

> compartment, and 4 per cent on direct loans. The new penalty interest rates are to be effective September 1 and will apply to items delinquent on and after that date."

The record in the court below does not disclose by what authority the agents of the Federal Land Bank disregarded the resolution of the board of directors as well as the statute. The statute is applicable to all of the Federal land banks in the United States and an authoritative construction of it is essential to the conduct of the business of the farmers and the banks.

The Land Bank contended that the judgment of the State court in which interest was computed at 5½ per cent and which by its terms directed that interest should be added from the date of the judgment until payment at the same rate was controlling, and the court found and decreed that:

> "That certain judgment or decree of foreclosure entered in the District Court in and for Cache County, Utah, in that certain action in said court wherein the Federal Lank Band of Berkeley is the plaintiff and Joseph B. White and the said bankrupt and others are the defendants on March 10, 1938, which action was brought by said plaintiff for the foreclosure of three certain mortgages held by said plaintiff and covering the real property of said bankrupt is in all respects valid and binding upon this Court in this proceeding."

This judgment was made in disregard of the Federal statute, and notwithstanding the State court judgment covered only a part of the demands of the creditor, and it had nothing whatsoever to do with the costs and attorney's fees.

A State court may not disregard the prohibition of a Federal statute.

Kalb v. *Feuerstein*, 308 U. S. 433, 84 L. Ed. 370.

The Federal statute, Section 771 (Twelfth) U. S. C. A. page 830, says the rate of interest

> " * * * shall not exceed 3½ per cent per annum."

and Section 791. Title 12, page 840, U. S. C. A. says:

> "No Federal Lank Bank shall have power * * *
>
> Fifth. To demand or receive under any form or pretense any commission or charge not specifically authorized in this subchapter."

Thus the bank is prohibited from charging more than 3½ per cent interest and to make doubly certain that it does business within the bounds fixed it is prohibited from receiving money except as authorized by the statute. Regardless of the validity of the judgment of the State court including within its express terms 5½ per cent interest, and even though the bank had a right to cause execution to be issued and the full amount of the judgment collected, still it would have no right to receive money in excess of 3½ per cent, and if it received it, it still would have no right to hold it because of the prohibition of the statute.

There is another phase of this case which must appeal to the court. The district court has so far departed from the accepted and usual course of judicial proceedings and the Circuit Court of Appeals has so far sanctioned such a departure by the lower court that this Court should exercise its power of supervision. Reference is made to the fact that the district court by the dismissal of the petitions of the debtor refused to pass upon costs and attorney's fees charged by the bank as a creditor of the bankrupt while the proceeding was pending in that court, and the Circuit Court of Appeals has sanctioned such an utter disregard of the usual and necessary practice of the court passing upon its own costs and expenses. Furthermore, the Circuit Court of Appeals has relegated this debtor to a plenary suit, per-

haps in the State where the Federal Land Bank maintains its principal office for it is not a resident of the State of Utah,

Crane v. *Federal Land Bank, in re: Ewles Estate,* 143 P. 2nd 903;

for the sole purpose of determining whether in the district court for the District of Utah, the Federal Land Bank had a right to demand and receive attorney's fees and expenses. The court also departed from the accepted course of procedure in refusing specifically to pass upon the amount of the bank's claim which included interest. The debtor is told to go into another court in a plenary suit to determine what the district court should or should not allow, and inasmuch as the matter is still pending in the district court presumably it would be necessary to file the judgment of a foreign court in the district court for such disposition as the district court should then see fit to make.

These statutes all pertain essentially to the business of federal agencies, and it is of the utmost importance that they be construed and the law and the procedure authoritatively settled.

The payment in this case was in no sense voluntary for the court was proceeding to sell the property notwithstanding the mortgagor was able and willing to pay the full legal obligation. It was compelled to pay or suffer the loss of the property. The case comes clearly within the rule laid down in

United States v. *New York & Cuba Mail Steamship Co.,* 200 U. S. 488, 50 L. Ed. 569.

The record throughout in this case discloses the persistent disregard of the provisions of the Federal Farm Loan Act clearly intended to limit and restrict the federal land banks in their demands for money to the express authority con-

ferred by the act. The banks are not authorized to demand and receive money wherever they may as commercial institutions. Their authority on the whole is limited to making loans and to collecting interest within the limitations of the Act, and the principal in the manner prescribed by law. Neither have they power to authorize attorneys indiscriminately to demand and collect fees wherever they may. It will be found that mortgages taken by reference incorporate the Federal Farm Loan Act and that Congress reserved the right to limit and restrict the interest collected as it did by Section 771 (Twelfth).

It is respectfully submitted that because of the clear disregard and violation of the federal statutes that a writ should issue.

Respectfully submitted,

J. D. SKEEN,
Attorney for Petitioner.

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JUN 18 1945

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. [redacted] 84

PARADISE LAND AND LIVESTOCK COMPANY,
A CORPORATION,
PETITIONER,

VS.

THE FEDERAL LAND BANK OF BERKELEY,
RESPONDENT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

RICHARD W. YOUNG,
MORTON G. HOFFMANN,
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Counsel for Respondent.

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RESPONDENT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

I

STATEMENT OF FACTS

On March 10, 1938, a foreclosure decree was entered in the state court of Utah in favor of respondent and against petitioner. (R. 14-17)

On June 16, 1938, petitioner was adjudicated bankrupt under Section 75(s).

On April 1, 1940, the three-year stay and rental order became effective. Only one full year's rental was paid.

On November 23, 1942, the Federal District Court found that the amount owing to respondent by petitioner as of October 3, 1942, was $81,138.84, and under the same order the value of petitioner's property was determined and a reasonable time in which to redeem under the first proviso of Setcion 75(s) (3) was fixed. (R. 5, 6) Petitioner failed to pay the value into Court.

On February 18, 1944, respondent filed a request for a sale of its security at public auction in accordance with the second proviso of Section 75(s) (3).

II

QUESTION PRESENTED

The sole question presented by the petition for certiorari is whether the Circuit Court of Appeals, Tenth Circuit, erred in dismissing petitioner's appeal. Obviously, the answer to this question depends upon whether the question before the Circuit Court became moot.

III

THE SOLE QUESTION BEFORE THE CIRCUIT COURT OF APPEALS, TENTH CIRCUIT, WAS WHETHER THE FORECLOSURE DECREE IN THE STATE COURT WAS BINDING ON THE BANKRUPTCY COURT.

The order of the Federal District Court was dated June 26, 1944. (R. 45-48) The decree of foreclosure entered in the Utah state court *prior to the filing of petitioner's petition under Section 75* was held to be "in all respects valid and binding upon this Court in this proceeding." (R. 47) The petitioner had offered to pay the sum of $66,510.84 in full satisfaction of the indebtedness of $81,138.84 owing to

respondent, which amount the court found in this order to be substantially insufficient in amount to satisfy said indebtedness. At the hearing, from which the order appealed from resulted, *the Federal District Judge expressly reserved consideration of the expenditures made by respondent until the final hearing on the confirmation of the sale*, which the court then contemplated would be made by the trustee under the second proviso of Section 75 (s) (3). Accordingly, the sole question that could properly have been presented to the Circuit Court of Appeals was whether the decree of foreclosure entered in the state court was binding on the bankruptcy court.

IV

THE SOLE QUESTION BEFORE THE CIRCUIT COURT OF APPEALS WAS MADE MOOT BY PETITIONER'S VOLUNTARY PAYMENT OUT OF COURT OF THE AMOUNT CLAIMED UNDER THE FORECLOSURE DECREE.

On August 18, 1944, while the appeal was pending, petitioner voluntarily paid to the respondent $86,949.82, the total amount claimed by respondent, although approximately $17,000.00 thereof was paid under protest. This money was paid to respondent, without any court approval. By this voluntary payment, made out of court, the entire indebtedness due and owing to respondent was satisfied, and, except for a small portion of the mortgaged property that was later sold under court order, the property remained under the bankruptcy court's jurisdiction.

As the Circuit Court of Appeals had before it the sole question as to whether the foreclosure decree was binding upon the bankruptcy court, the question manifestly became moot when the judgment was paid voluntarily by petitioner.

Therefore, it is respectfully submitted that the Circuit Court of Appeals did not err in dismissing the appeal, and in holding that any right petitioner "claimed to recover what it had paid under protest would have to be asserted in an independent action brought by it against the bank." (R. 56)

V

THE QUESTIONS RAISED BY PETITIONER ARE IRRELEVANT.

In its petition and supporting brief petitioner gives no consideration to the question before this Court, but directs its petition and argument to the merits, not only of the sole question before the Circuit Court of Appeals, but of the question which the District Judge expressly reserved for future consideration. Without conceding their relevancy respondent will discuss, in the order adopted by petitioner, the several reasons given by it as to why its petition should be granted. (Petition for Writ, p.p. 4, 5)

1. Section 75(b) of the Bankruptcy Act has no bearing whatsoever on the question presented to the Circuit Court of Appeals. The provisions thereof pertain exclusively to proceedings under Subsections (a-r) and not to proceedings under Subsection (s).

2. As the District Judge had not decided the question of attorney fees and other costs and expenses, the dismissal of the appeal could not amount to a decision that said fees and expenses were proper. In any event, Section 62(d) of the Bankruptcy Act, 11 U.S.C., 102(d), applies solely to attorney fees which are sought to be paid from the general assets of the estate as an expense of administration. This is not a case where, as petitioner infers, attorneys have been allowed fees without following statutory procedure. Respon-

dent's position as to its attorney fees and expenses has been that under the terms of its mortgages it is entitled to include as a part of its lien outlays made for the protection of its mortgages. In the foreclosure decree of the state court the Court found:

> "that it is provided in each said mortgage that in the event suit is instituted to foreclose the same any sums paid by the mortgagee for the protection of its mortgage, including costs, legal expenses and attorney's fees, shall be deemed part of the debt secured by each said mortgage;" (R. 15)

Respondent's contention is that, when bankruptcy proceedings are instituted under Section 75 of the Bankruptcy Act during the pendency of a foreclosure action, the reasonable expenses to which the mortgagee is put in protecting its interests in the bankruptcy court are such costs and expenses as are contemplated under the terms of its mortgages.

3. and 4. Neither Section 791 (Fifth) nor Section 983, Title 12, U. S. C. prohibits respondent from demanding and receiving attorney fees and other expenses in a foreclosure action.

This Court, in the case of *The Federal Land Bank of Berkeley* v. *Warner*, 292 U. S. 53, 54 S. Ct. 571, wherein Title 12 U. S. C., Section 983, was under consideration, stated:

> "The act establishes cooperation between borrowers on farm mortgages and investors in the bonds secured by them. The requirement, by means of the mortgage provision, *that a mortgagor shall bear the expense put upon the bank by his default is reasonable and in harmony with that principle.*"*

*All emphasis to quotations added throughout this brief.

5. The foreclosure decree in the Utah state court had not been taken by default and there had been no appeal. It was not subject to collateral attack as being void or erroneous. The law under which petitioner claims that the foreclosure decree provides for interest on the judgment at an improper rate was in effect when the foreclosure decree was entered. It is a well recognized presumption that the trial court considered all questions necessary for the issuance of the decree (15 R.C.L. 876). Even if the state court had incorrectly interpreted this Federal statute, such interpretation can be corrected only on appeal. (*Union Joint Stock Land Bank* v. *Byerly*, 310 U. S. 1, 60 S. Ct. 773; *Bernards* v. *Johnson*, 62 S. Ct. 30.)

Under no circumstances can it properly be said that *the dismissal of the appeal* sanctions the utter disregard of Title 12 U.S.C., Section 771 (Twelfth), as contended by petitioner.

There is an indisputable answer to petitioner's argument as to the legality of the foreclosure decree. Three mortgages were involved. The first two notes and mortgages were dated December 1, 1921. Principal and interest were payable in semi-annual installments over a period of thirty-three years. The installment dates were June 1 and December 1 each year. The interest rate was six per cent. The other note and mortgage were dated January 1, 1931. Principal and interest were payable in semi-annual installments over a period of thirty-four and one-half years. The installment dates were January 1 and July 1 each year. The interest rate was five and one-half per cent.

Several sections of the Federal Farm Loan Act (12 U.S.C., Chap. 7) must be considered. The first of the pertinent sections reads in part as follows:

"Section 771, Second. Every such mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual or semi-annual installments sufficient to cover, first, a charge on the loan at a rate not exceeding the interest rate in the last series of farm loan bonds issued by the Land Bank making the loan; second, a charge for administration and profits at a rate not exceeding, except with the approval of the Governor of the Farm Credit Administration, 1 per centum per annum on the unpaid principal, said two rates combined constituting the interest rate on the mortgage; and, third, such amounts to be applied on the principal as will extinguish the debt within an agreed period, not less than five years nor more than forty years."

The interest rate on the last series of farm loan bonds issued before the execution of the first two mortgages in this case was five per cent. The interest rate on the last series of farm loan bonds issued before the execution of the other mortgage was four and one-half per cent. These rates, plus the one per cent additional provided for in the Act, constituted the six per cent and the five and one-half per cent rates at which the respective notes and mortgages were written. Accordingly, these were the contract interest rates on the non-delinquent portions of the indebtedness. Reference is made to the *non-delinquent* portion of the indebtedness because Section 771, Ninth, provides that "Every borrower shall pay simple interest on *defaulted* payments at the rate of eight per cent per annum. . . ."

Therefore, we have Section 771, Second, pertaining exclusively to interest on *non-delinquent* indebtedness, and Section 771, Ninth, pertaining exclusively to interest on *delinquent* indebtedness. *Paragraphs "Second" and "Ninth" have been a part of the Federal Farm Loan Act since its enactment in 1916.*

During the depression, on May 12, 1933, Paragraph "Twelfth" was added to Section 771, and has since been amended. The pertinent portion thereof now reads as follows:

> "Notwithstanding the provisions of Paragraph 'Second' of this section, the rate of interest on any loans on mortgages made through national farm loan associations . . . by any Federal Land Bank, outstanding on May 12, 1933, or made through national farm loan associations after such date, shall not exceed 3½ per centum per annum *for all interest payable on installment dates occurring within a period of five years" (nine years, as amended June 27, 1942) "commencing July 1, 1935;* and no payment of the principal portion of any instalment of any such loan outstanding on June 3, 1935, shall be required prior to July 11, 1938, *if the borrower shall not be in default with respect to any other condition or covenant of his mortgage* . . . the Secretary of the Treasury shall pay each Federal Land Bank as soon as practicable after October 1, 1933, and after the end of each quarter thereafter, such amount as the Land Bank Commissioner certifies to the Secretary of the Treasury is equal to the amount by which interest payments on mortgages held by such bank have been reduced, during the preceding quarter by reason of this paragraph; . . . there is authorized to be appropriated, . . . the sum of $15,000,000.00 for the purpose of enabling the Secretary of the Treasury to make payments to Federal Land Banks which accrue during the fiscal year ending June 30, 1934, and such additional amounts as may be necessary to make payments accruing during subsequent fiscal years."

Petitioner contends that the foregoing section has been incorrectly interpreted for the past twelve years by the Farm Credit Administration, the twelve Federal Land Banks of the system and the Secretary of the Treasury. That is, it contends that an interpretation which it places on the sec-

tion, which is absolutely contrary to the interpretation which has been followed by all concerned during the past twelve years, is correct.

In the *Warner* case *supra*, the Supreme Court of the United States, in referring to the interpretation of a portion of the Federal Farm Loan Act, said:

> "From this it appears that officers charged by law with the administration of the banks *have always construed the Act* to permit state laws to control. Our attention has not been called to any case in which that construction has been questioned. *It is entitled to great weight. U. S.* v. *Mo. Pac. R. Co.*, 278 U. S. 269, 280."

Petitioner's position is that by the amendment to Section 771, Twelfth, Congress intended to provide that between its effective dates the *delinquent* interest rate under Paragraph "Ninth," as well as the *non-delinquent* rate under Paragraph "Second," was reduced to three and one-half per cent. The fallacy of this contention is self-evident. If Congress had so intended, the amendment would surely have read in part: "Notwithstanding the provisions of Paragraph 'Second' *and Paragraph 'Ninth'* of the section, the rate of interest . . . shall not exceed 3½ per centum per annum." Since Paragraph "Ninth," pertaining exclusively to interest on delinquent indebtedness, was not mentioned in Paragraph "Twelfth," the amendment cannot, under any rule of construction, be interpreted to include said Paragraph "Ninth."

Petitioner gives no consideration to the portion of the paragraph following "3½ per centum per annum." To complete the sentence wherein these words appear we find the *pertinent limitation* which, during the past twelve years, has

governed all concerned, but which appellant ignores. The complete statement is that interest shall not exceed "3½ per centum per annum *for all interest payable on installment dates* occurring within a period of (nine) years." All Land Bank notes and mortgages are written, as required by the Act, on the amortization plan, under which principal and interest are payable in semi-annual installments *on the installment dates* mentioned in the notes and mortgages.

In considering Paragraph "Second," which was amended, Congress knew that the notes and mortgages must provide for payment of interest on annual or semi-annual installment dates, and that Paragraph "Ninth," *which was not amended, did not provide that the eight per cent interest should be paid on installment dates.* The very simple method of limiting the reduced rate to *non-delinquent* installments as they became due was to limit it to "*all interest payable on installment dates.*"

Petitioner has not been charged in excess of three and one-half per cent per annum for interest which was "payable on installment dates," beginning July 1, 1935. On each such installment date, when interest became payable, petitioner was charged only three and one-half per cent and the remaining two and one-half per cent on the six per cent loans and the remaining two per cent on the five and one-half per cent loan was collected from the Secretary of the Treasury. However, after petitioner's default and the resultant acceleration of the maturity of the unmatured balance of the loans for the purpose of instituting foreclosure, interest was no longer "payable on installment dates," since the terms of the notes and mortgages which provided for the payment of interest *on installment dates* were no longer of any force and effect, the whole indebtedness being due by reason of the fact

that the Bank exercised its right to accelerate the maturity because of petitioner's default. Petitioner's major complaint as to interest is that on the amounts found in the foreclosure decree to be due, the state court fixed the interest rate at the state statutory rate for interest on judgments, instead of at the rate of 3½ per cent.

Petitioner also contends that respondent's Board of Directors voluntarily reduced the interest on delinquent accounts to 3½ per cent per annum. Petitioner quotes the action taken by respondent's Board of Directors on August 29, 1939. Since this action was taken nearly eighteen months *after* the decree in foreclosure was entered, (R. 14, 15) it is manifest that it could have had no bearing whatsoever on the amount of the judgment in the foreclosure action.

As to the first two mortgages, the foreclosure decree provides that respondent shall have judgment for specific amounts "with interest thereon at six per cent a year from date of judgment, and any accruing costs paid by plaintiff." As to the other mortgage, the decree contains the same provision, except that the interest rate on the judgment is stated to be five and one-half per cent. It must be petitioner's contention that the Board of Directors' action, which certainly was not retroactive, had the effect of changing the provisions of the foreclosure decree, so that subsequent to September 1, 1939, respondent was entitled to but three and one-half per cent interest on the three specific sums found to be due and for which judgment was entered.

The action of the Board of Directors taken on August 29, 1939, states that it was "decided to reduce the *penalty interest* rate from 6 per cent to 3½ per cent." Section 12, Ninth, of the Federal Farm Loan Act, *supra*, prescribes the interest rate to be charged on "defaulted" payments, which

is "penalty interest." The interest on a judgment procured in a foreclosure action is not penalty interest, and is never referred to as such. After a mortgage has been reduced to judgment, the interest rates on *loans* are no longer applicable, as the mortgage is superseded by the judgment. The State law as to the interest allowed on judgments then applies, which, in Utah, is the rate provided for in the contract. (Utah Code Ann. 1943, Sec. 44-0-4).

6. The "claim" to which petitioner refers is respondent's demand, *out of court*, for repayment of the total indebtedness due it, including expenses to which it was put during the bankruptcy proceedings, in consideration that it release its lien of the foreclosure judgment. Since the District Judge expressly deferred consideration thereof, the issue was not before the Circuit Court.

7. Petitioner, on its own initiative, abandoned the statutory method of having respondent's claim settled by the bankruptcy court after a sale under the second proviso of Section 75(s) (3), and voluntarily paid the full amount of the indebtedness due and owing. It now complains because the Circuit Court left petitioner where it, the petitioner, had placed itself.

Respectfully submitted,

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